Kuantan Flour Mills Berhad v Wee Tuck Lee Food Industries

HIGH COURT (MELAKA) — CIVIL APPEAL NO 1–11–7 OF 2005
LOW HOP BING J
17 MAY 2007

Civil Procedure — Summary Judgment — Triable issues — Whether bare allegation constitute triable issue — Lack of merchantable quality and purchase of goods from plaintiff — Whether summary judgment ought to be entered — Rules of the High Court 1980 O 14

The plaintiff sold and delivered goods to the defendant. The defendant acknowledged receipt of the goods by affixing the defendant's rubber stamp, signature and the respective date on each delivery. The defendant made part payment and was given rebates. The plaintiff claimed the outstanding balance sum then due and owing, particulars of which had been rendered. The defendant alleged that the goods sold and delivered were not of merchantable quality. The defendant further denied it had ordered or purchased the goods from the plaintiff. The magistrate dismissed the plaintiff's application for summary judgment and the plaintiff appealed.

Held, allowing the appeal and entering summary judgment against the defendant with costs and interest at 8% pa from the date of summons to realisation:

(1) The determination of whether or not there is a triable issue depends on the facts or the law arising from the case (see para 7); *Bank Negara Malaysia v Mohd Ismail & Ors* [1992] 1 MLJ 400 (folld) (see para 7).

(2) The goods were sold and delivered on four separate occasions pursuant to the defendant's purchase orders dated from January 2003 to April 2003. The defendant's allegation that the plaintiffs goods were not of merchantable quality was a bare allegation without condescending to particulars. The defendant had failed to identify the specific occasion(s) on which the plaintiff's goods were found not to be of merchantable quality. Such a bare allegation was not a triable issue (see paras 8–10); *Perbadanan Pembangunan Ekonomi Sarawak v Sarawak Motor Industries Bhd* [1989] 3 MLJ 246 (refd), *Huo Heng Oil Co (EM) Sdn Bhd v Tang Tiew Yong* [1987] 1 MLJ 139 (refd);*Chen Heng Ping & Ors v Intradagang Merchant Bankers (M) Bhd* [1995] 2 MLJ 363 (refd) (see para 8).

(3) The defendant's first defence that the plaintiff's goods were not of merchantable quality presupposed that the defendant embarked on a close examination of the goods sold and delivered by the plaintiff to the defendant. The subsequent denial that the defendant had ordered and purchased the goods contradicted the defendant's first defence above, of lack of merchantable

quality, as did the defendant's own documents and the defendant's cheques in part payment for the goods sold and delivered (see paras 12, 13).

[Bahasa Malaysia summary

Plaintif telah menjual dan menghantarserah barangan kepada defendan. Defendan telah mengakuterima penerimaan barangan masing-masing dengan mengecap cap getah defendan, menurunkan tandatangan dan tarikh untuk setiap penghantaran. Defendan telah membuat sebahagian bayaran dan telah diberikan potongan harga. Plaintif menuntut untuk jumlah baki yang masih tertunggak yang telah genap masa dan masih terhutang, butir-butirnya seperti yang diberikan. Defendan mendakwa bahawa barangan yang dijual dan dihantarserah adalah bukan dalam kualiti boleh niaga. Defendan selanjutnya menafikan bahawa dia telah memesan dan membeli barangan daripada plaintif. Majistret telah menolak permohonan plaintif untuk penghakiman terus dan plaintif merayu.

Diputuskan, membenarkan rayuan dan memasukkan penghakiman terus kepada defendan dengan kos dan faedah sebanyak 8% setahun dari tarikh saman sehingga penyelesaian sepenuhnya:

(1) Bagi menentukan sama ada terdapat isu untuk dibicarakan adalah bergantung kepada fakta-fakta atau perundangan yang timbul daripada kes (lihat perengan 7); *Bank Negara Malaysia v Mohd Ismail & Ors* [1992] 1 MLJ 400 (diikuti).

(2) Barangan telah dijual dan dihantarserah pada empat keadaan berasingan berpandukan kepada pesanan belian defendan bertarikh dari Januari 2003 sehingga April 2003. Dakwaan defendan bahawa barangan plaintif bukan kualiti boleh niaga adalah dakwaan kosong tanpa mengambilkira butir-butir. Defendan telah gagal mengenalpasti keadaan-keadaan khusus dalam mana barangan-barangan plaintif telah dikatakan bukan kualiti boleh niaga. Dakwaan kosong tersebut bukanlah isu untuk dibicarakan (lihat perenggan 8 & 9); (*Perbadanan Pembangunan Ekonomi Sarawak v Sarawak Motor Industries Bhd* [1989] 3 MLJ 246 (dirujuk), *Huo Heng Oil Co (E.M.) Sdn Bhd v Tang Tiew Yong* [1987] 1 MLJ 139 (dirujuk), *Chen Heng Ping & Ors v Intradagang Merchant Bankers (M) Bhd* [1995] 2 MLJ 363 (dirujuk).

(3) Pembelaan pertama defendan adalah bahawa barangan-barangan plaintif bukan kualiti boleh niaga dengan mengandaikan bahawa defendan telah membuat pemeriksaan secara teliti terhadap barangan-barangan yang telah dijual dan dihantarserah oleh plaintif kepada defendan. Penafian berikutnya bahawa defendan telah memesan dan membeli barangan-barangan yang bertentangan dengan pembelaan pertama defendan di atas kerana kekurangan kualiti boleh niaga, sepertimana dokumen defendan sendiri dan cek-cek defendan dalam sebahagian pembayaran untuk barangan-barangan yang telah dijual dan dihantarserah (lihat perenggan 12 & 13).]

Notes

For cases on triable issues, see 2(2) *Mallal's Digest* (4th Ed, 2004 Reissue) paras 3170–3243..

Cases referred to

Bank Negara Malaysia v Mohd Ismail & Ors [1992] 1 MLJ 400 (folld)

Chen Heng Ping & Ors v Intradagang Merchant Bankers (M) Bhd [1995] 2 MLJ 363 (refd)

Huo Heng Oil Co (EM) Sdn Bhd v Tang Tiew Yong [1987] 1 MLJ 139 (refd)

Perbadanan Pembangunan Ekonomi Sarawak v Sarawak Motor Industries Bhd [1989] 3 MLJ 246 (refd)

Legislation referred to

Rules of the High Court 1980 O 14

AB Ng (AB Ng & Associates) for the defendant.

Peter Gan (Hock & Associates) for the plaintiff.

Low Hop Bing J:

APPEAL

[1] This is the appeal by the appellant/plaintiff ('the plaintiff') against the decision of the learned magistrate who had on 16 June 2005 dismissed the plaintiff's application for summary judgment under O 26A of the Subordinate Courts Rules 1980 ('the SCR').

FACTUAL BACKGROUND

[2] The plaintiff had at the request of the defendant sold and delivered goods to the defendant. The particulars thereof are as follows:

Defendant's purchase order	Plaintiffs delivery order and invoice	Amount RM
No 0462 dated 8 January 2003	No 75282 dated 13 January 2003	5,680
No 0478 dated 24 February 2003	No 77993 dated 26 February 2003	5,680
No 0486 dated 5 March 2003	No 78558 dated 7 March 2003	5,680
No 0497 dated 16 April 2003	No 81581 dated 23 April 2003	5,680
	TOTAL	**22,720**

[3] The defendant had acknowledged receipt of the goods by affixing the defendant's rubber stamp, signature and the respective date, and had indeed made some payments therefor viz RM5,480 vide UOB cheque No 535940 dated 11 August 2003 and RM2,000 vide UOB cheque No 574012 dated 1 December 2003, making a total sum of RM7,480.

[4] The plaintiff had given the defendant three rebates amounting to RM840, as a result of which the plaintiff is now claiming the outstanding balance sum of RM14,400. Particulars thereof had been rendered by the plaintiff to the defendant.

MERCHANTABLE QUALITY

[5] It was submitted by defendant's learned counsel Mr AB Ng that the goods sold and delivered by the plaintiff to the defendant were not of merchantable quality.

[6] The plaintiffs learned counsel Mr Peter Gan contended that there is no triable issue and summary judgment should be entered for the plaintiff.

[7] In my judgment, the determination of whether an issue is or is not triable depends on the facts or the law arising from each case as disclosed in the affidavit evidence before the court: per Mohamed Azmi SCJ (as he then was) delivering the majority judgment of the Federal Court in*Bank Negara Malaysia v Mohd Ismail & Ors* [1992] 1 MLJ 400 at 408.

[8] Paragraph 3 of the defendant's affidavit alleged that the plaintiff's goods were not of merchantable quality. In this regard, it is to be noted that the goods were sold and delivered by the plaintiff to the defendant not on one single occasion but four separate occasions pursuant to the defendant's purchase orders dating from 8 January 2003 to 16 April 2003. The defendant's above allegation is obviously a bare allegation without condescending upon particulars. The defendant has not identified the specific occasion on which the plaintiffs goods were found not to be of merchantable quality.

[9] It is trite law that a bare allegation does not constitute a triable issue: see *Perbadanan Pembangunan Ekonomi Sarawak v Sarawak Motor Industries Bhd* [1989] 3 MLJ 246 at 249, HC per Haidar J (later CJ (M)); *Huo Heng Oil Co (EM) Sdn Bhd v Tang Tiew Yong* [1987] 1 MLJ 139 at 141, HC, per Chong Siew Fai J (later CJ (Sabah & Sarawak));*Chen Heng Ping & Ors v Intradagang Merchant Bankers (M) Bhd* [1995] 2 MLJ 363 at 367, CA, per Mahadev Shankar JCA (as he then was).

[10] There can be no doubt that the defendant has raised a sham defence giving rise to no triable issue at all.

ORDER FOR GOODS

[11] The defendant's second and last defence is that it has not ordered or purchased the goods from the plaintiff.

[12] In my judgment, this is another sham defence and contradicts the defendant's own contemporary documents viz the defendant's four purchase orders and the defendant's own cheques being part payments for the goods sold and delivered by the plaintiff to the defendant.

[13] Further, the defendant's first defence that the plaintiffs goods were not of merchantable quality presupposes that the defendant has embarked on a close examination of the goods sold and delivered by the plaintiff to the defendant. The defendant's first and second defences are mutually contradictory and self-defeating.

[14] There is absolutely no triable issue at all.

CONCLUSION

[15] The plaintiff's claim is plain and obvious. It is entitled to sign summary judgment in the sum of RM14,400 with interest and costs. I therefore allow this appeal, set aside the learned magistrate's order, and give judgment in favour of the plaintiff in the aforesaid sum, with interest at 8% pa from the date of the summons, ie 21 June 2004 to the date of realisation, and costs in this appeal and the court below.

Appeal allowed.

Reported by Sivapragasam Kumaran